

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

FILED MAR 12 4 9 30 PM '24

UNITED STATES DISTRICT COURT

for the

District of OregonPortland Division

2:24-cv-00449-SI

Case No.

(to be filled in by the Clerk's Office)

DANIEL WAYNE DAVIS

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

MRS. DAVIES / David Pedro

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

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I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

DANIEL WAYNE DAVIS

All other names by which
you have been known:

N/A

ID Number

15373883

Current Institution

EASTERN OREGON CORRECTIONAL INSTITUTE

Address

2500 Westgate

Pendleton

OR

97801

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

MRS. DAVIES

Job or Title (*if known*)

Medical Provider

Shield Number

Employer

Address

2500 Westgate

Pendleton

OR

97801

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 2

Name

DAVID PEDRO

Job or Title (*if known*)

Acting Super Intendant

Shield Number

Employer

Address

2500 Westgate

Pendleton

OR

97801

City

State

Zip Code



Individual capacity



Official capacity

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Defendant No. 3

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☒ Individual capacity ☒ Official capacity

Defendant No. 4

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☐ Individual capacity ☐ Official capacity**II. Basis for Jurisdiction**

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

8th And 14th Amendments of the U.S.C.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

See Attached #2(D) Basis For Jurisdiction

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

N/A

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

see Attached #4(B) statement of claim

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- C. What date and approximate time did the events giving rise to your claim(s) occur?

See Attached #4(c) statement of claim

- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

See Attached #4(d) statement of claim

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

See Attached #5 INJURIES

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

See Attached #6 Relief

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VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

EASTERN OREGON CORRECTIONAL INSTITUTION

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

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2. What did you claim in your grievance?

SEE ATTACHED #7(22) EXHAUSTION OF ADMIN. REMEDIES/PROCEDURES

3. What was the result, if any?

SEE ATTACHED #7(23) EXHAUSTION OF ADMIN. REMEDIES/PROCEDURES

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

SEE ATTACHED #7(24) EXHAUSTION OF ADMIN. REMEDIES/PROCEDURES
~~_____~~

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

See Attached #7(G) exhaustion of Admin. Remedies/Procedures
(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

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IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

3/07/2024

Signature of Plaintiff



Printed Name of Plaintiff

DANIEL WAYNE DAVIS

Prison Identification #

15373883

Prison Address

2500 Westgate

Pendleton

City

OR

State

97801

Zip Code

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

FILED MAR 24 9 30 USC ORP

CERTIFICATE OF SERVICE

CASE NAME: DANIEL WAYNE DAVIS v. MRS. DAVIES / David Pedro

CASE NUMBER: (if known) _____

COMES NOW, DANIEL WAYNE DAVIS, and certifies the following:That I am incarcerated by the Oregon Department of Corrections at EASTERN OREGON
CORRECTIONAL INSTITUTEThat on the 07 day of MARCH, 2024, I personally placed in the
Correctional Institution's mailing service A TRUE COPY of the following:Civil Rights Section 1983I placed the above in a securely enclosed, postage prepaid envelope, to the person(s)
named at the places addressed below:U.S. District Courts
Portland Division
Mark O. Hatfield U.S. Courthouse
1000 S.W. Third Ave
Portland OR 97204U.S. Attorney's Office District of Oregon
Portland District Office
1000 S.W. Third Ave Suite 600
Portland OR 97204
(Signature)Print Name DANIEL WAYNE DAVIS
S.I.D. No.: 15373887
2500 Westgate
Pendleton OR 97201

#2 Basis for Jurisdiction

(D) Mr. Pedro is responsible for my confinement, Mrs. Davies is responsible for providing adequate medical care- misuse of power, possessed by virtue of state law, and made possible only because the wrongdoers (Mr. Pedro and Mrs. Davies) are clothed with the authority of state law and the action taken was "under the color of" state law

#4 Statement of Claim

(B) On or about July 27, 2021 at Eastern Oregon Correctional Institute on housing unit F2 in the A.I.C. dormitory.

(C) On or about July 27, 2021 in the early evening after dinner call, before the 11:00 pm institution count.

(D) I was assaulted by A.I.C. Shane Mcrae, in the result of defending myself, my left bicept muscle ultimately tore along with a 11.5 cm tendon retraction. This event happened in front of about 25 A.I.C's

#5 Injuries

I sustained a retracted tear of the left bicept muscle, with approximately 11.5 cm of tendon retraction that required a transplant of the muscle that I did not receive due to medical sending me to the specialist past the time frame required of a successful transplant or repair.

#6 Relief

I would like to be awarded one Million dollars, due to the fact of I now have irreplaceable damage of my left bicept muscle with a 15-18% diminished strength, because medical failed to send me to a "specialist" in a timely manner to have my injury repaired

#7 Exhaustion of Administrative Remedies Administrative procedures

(E2) On 8/5/2021 I requested outside medical treatment (i.e. MRI on my left bicept), on 5/5/2022 in my grievance appeal I again asked for outside medical treatment (I.E. second opinion from a "specialist")

(E3) I was eventually taken out for an MRI on February 7, 2022 and then eventually taken to Motion Orthopedics Pc on February 14, 2022.

(E4) I filed grievance, grievance appeal, as well as sent numerous inmate communication forms (kytes) requesting medical treatment.

(G) From the time of my first grievance on 8/5/2021 it took forty days to get a response back. On my second grievance on 3/1/2022 it took fifty-one days to get a response back. It took four months and two days from the time I first filed my first grievance to when I was finally taken for an MRI and an additional seven days before being taken to the "specialist" Dr. Carpenter. In sum it took six months and nine days from the time I was first injured to when I seen the "specialist"

Notes (kytes/communications)

- Kyte 8/5/21 - while sitting in ~~DSU~~ DSU I signed up EVERYDAY for sick call for my Arm pain. Everyday I was Told if it gets worse to sign up AGAIN for sick call. when the NURSE ON FINAL DAY AFTER talking ON phone with the provider He came to my cell DSU 31 & told me in his words "I went to BAT for you As much As I could But the provider stated there is nothing left for us to do"
- Kyte 8/17/21 - Medical knowing Im Injured Does not put A Bottom Buck Restriction for me At time
- Kyte 11/4/21 - ~~Q~~ Response from medical "Chart Review" is typical Response And Nothing Gets Done. Medical Negligence?
- Test Result 11/23/21 - Took me to kyte medical to Get Results
- Chart Review 11/29/21 - Approval Given for MRI And ~~consult~~ Consult with specialist After 3 1/2 months of complaining something else needs to be Done
- Kyte 2/14/22 - still complaining of Pain But ONCE AGAIN Nothing is Being Done

- KYTE 3/1/22 - Assignment office/prison moves me to top Bunk when I should HAVE Bottom Bunk Restriction. I should NEVER HAVE to HAVE waited for medical to Review this.
- KYTE 3/8/22 - When I seen DR. CARPENTER the Specialist ON 2/14/22 HE told me to Ask D.O.C medical for Compression sleeve see KYTE for Response.
- KYTE 3/29/22 - ONCE AGAIN Im Complaining About PAIN. But NOTHING is DONE. SAYS Im scheduled to see provider, come find out Appt. NOT UNTIL AUG. 2022, 6 months? medical negligence
- KYTE 5/10/22 - AGAIN Complaining About PAIN, check Response OF COURSE I WANT to BE Seen, why send Another KYTE?
- KYTE 6/2/22 - SEE my Request. Response. OF COURSE I know I HAVE Appt coming up. What Does that DO for me now
- ~~KYTE~~ TLC comm 6/7/22 - Pyridoxine not Approved. Nothing About my ARM BRACE see previous notes/KYTE 6/2/22
- KYTE 6/29/22 - AGAIN Complaining About PAIN Obviously need to see provider BEFORE set Appt DATE. medical negligence

- TLC Comm 8/15/22 - Finally After seeing provider, physical therapy was approved only for 3 sessions though.
- kyle 9/5/22 - Asking About p/t
- Kyle 11/7/22 - Finally started p/t But still HAVING PAIN. [^]See Response, what other kyle. side note: physical Therapist told me he seen DR. CARPENTERS Report. Told me I need to push for 2nd ~~op~~ opinion He Believes my Arm CAN BE fixed And that DR. CARPENTER Aint A "specialist" Hes more of A GENERAL PRACTITIONER for these problems.

DANIEL W. DAVIS

#15373887

EOCI
2500 Westgate
Pendleton, Oregon 97801

NEOPOST FIRST-CLASS MAIL

03/08/2024

US POSTAGE \$004.27⁰



ZIP 97801
041M11468341

US District Courts

Portland Division

AHN: Court Clerk

1000 SW Third Ave

Portland OR 97204